IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION No.22727 of 2002

Between:

M.S.V. Prasada Rao, S/o. Seshagiri Rao, aged about 37 years,

Represented by his mother and General Power of Attorney Holder

M. Koteswaramma, W/o. Seshagiri Rao, aged about 66 years,

R/o. Sureshnagar, Kakinada, East Godavari District.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, represented by its

Principal Secretary, Revenue Department, Secretariat buildings,

Hyderabad.

2. The District Collector, Krishna at Machilipatnam.

3. The Special Officer and Competent Authority,

Urban Land Ceiling, Vijayawada-3, Krishna District.

4. M. Umamaheswara Rao, S/o. M.K. Gandhi, aged 37 years,

5. D. Rama Raju, S/o. Venkaiah, aged 57 years,

Both are residents of 21-9/2-46 and 21-17/1-2,

Near Ramadevi Municipal School, Madhuranagar, Vijayawada.

Respondents 4 and 5 are impleaded as per Court order dated

25.3.2004 in WPMP No.6057 of 2004.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any appropriate writ order or direction or a writ more particularly a writ in the nature of CERTIORARI to call for the records and to quash the Memo. No.7367/U.C.I.(1)/2002-6 dated 11.10.2002 of the 1st respondent herein.

Counsel for the Petitioner: MR.G.DHARMA RAO

Counsel for the Respondent Nos.1 to 3: GP FOR ASSIGNMENT

Counsel for the Respondent Nos.4 and 5: MR. SATYANARAYANA NIMMAGADDA

The Court made the following:

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.22727 OF 2002

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ORDER:

The petitioner herein is a grandson of one Jasthi Sanaiah. He owned land admeasuring Acs.5.25 in new town survey No.22/2, Block No.M, Ward No.6 of Machavaram village of Vijayawada. Late Sanaiah allegedly executed a Will dated 25.08.1980 in favour of the petitioner. After coming into force of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act, for brevity), Sanaiah had filed a declaration under Section 6(1) of the Act and also contended that the property being agricultural land, the provisions of the Act are not attracted. However, the same was rejected and the third respondent herein by order dated 27.06.1980 in C.C.No.2403 of 1976 passed final orders under Section 8(4) of the Act determining late Sanaiah is holder of 19,746 square meters of excess urban vacant land. The appeal filed against the same was also dismissed by the Commissioner of Land Reforms and Urban Land Ceilings. After following necessary procedure contemplated under Sections 10(1), (2) and (5) of the Act, the Government took possession of the excess vacant land of 19,746 square meters some time in June, 1985.

It is the case of the petitioner that after the judgment of the Supreme Court in **Atia Mohammadi Begum v State of U.P.**, he made representations on 10.11.1998,

07.12.1999 and 21.07.2000 requesting the respondents to follow the said judgment and instructions of the Government in Memo No.73489/U.C.I.(1)/93-4 dated 15.02.1994 and reconsider the final orders of the third respondent dated 27.06.1980 and declare 19,746 square meters of agricultural land not covered by the provisions of the Act. The petitioner filed writ petition being W.P.No.17002 of 2000 seeking a writ of mandamus directing the third respondent to consider his representations allegedly made to the third respondent. By order dated 30.09.2000, this Court disposed of the writ petition with a direction to the third respondent herein to pass appropriate orders on the representations of the petitioner in accordance with the judgments of the Supreme Court in **Atia Mohammadi Begum's case** (supra) and **Meera Gupta v State of West Bengal**. Pursuant thereto, the third respondent passed orders in C.C.No.2403 of 1976 on 18.12.2000 revising the orders under Section 8(4) of the Act holding that the lands are classified as agricultural lands and are being used for agricultural purpose. The third respondent also declared that the subject lands are not attracted by the provisions of the Act and that late Jasthi Sanaiah is not a person hit by the provisions of the Act. In the meanwhile, it appears some of the persons including the respondents 6 to 47 occupied the land. The petitioner alleges that his attempts to get back delivery of the possession failed. Therefore, he filed writ petition being W.P.No.34 of 2002 before this Court seeking a direction to the respondents to deliver possession of the land in N.T.S.No.22/2, Block No.8, Ward No.6, and this Court admitted the writ petition on 03.01.2002 and ordered notice. The said writ petition is pending before this Court.

The Government of Andhra Pradesh thereafter issued impugned show cause notice dated 11.10.2002 under Section 34 of the Act calling upon the petitioner as to why the orders of the third respondent dated 18.12.2000 (revised orders under section 8(4) of the Act) should not be set aside and why excess vacant land should not be redetermined as per law. The petitioner did not submit any explanation but straight away filed the present writ petition questioning the impugned show cause notice contending that the first respondent has initiated action under Section 34 of the Act under a mistaken impression that the third respondent has no powers to revise the orders passed earlier under Section 8(4) of the Act. This Court while admitting the writ petition passed interim orders on 14.11.2002 in W.P.M.P.No.28508 of 2002 observing that though the writ petition is filed against show cause notice, as the question of the competence to issue show cause notice is involved in the writ petition, it needs to be entertained and accordingly stayed all further proceedings. As many as 42 persons who claimed to be in occupation of the land got impleaded in the writ petition as respondents 6 to 47. When the said application was listed before this Court, the matter was heard finally.

Learned counsel for the petitioner Sri G.Dharma Rao submits that it was improper for the first respondent to exercise powers under Section 34 of the Act and therefore impugned show cause notice is without jurisdiction. **Per contra**, learned Assistant Government Pleader for Revenue (Assignment) and the learned counsel for contesting respondents contend that it is always open to the State Government to call for records of any order passed by any authority and examine the same after giving the person affected a reasonable opportunity of being heard. They also

submit that the writ petition against the show cause notice is not maintainable.

The only question that arises for consideration is whether in the facts and circumstances of the case, the writ petition is maintainable against the show cause notice issued under the proviso to Section 34 of the Act?

Section 34 of the Act reads as under:

34. Revision by State Government

The State Government may, on its own motion, call for and examine the records of any order passed or proceeding taken under the provisions of this Act and against which no appeal has been preferred under Section 12 or Section 30 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or as to the regularity of such procedure and such order with respect thereto as it may think fit:

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter.

The Government is conferred the power to *suo motu* call for and examine records of any order passed under the provisions of the Act for the purpose of satisfying itself as to legality or propriety of such order or as to regularity of such procedure. The power conferred is the broad power and is not circumvented by any factors. However, as per the proviso to Section 34 of the Act, no order can be passed by the Government except after giving the person affected a reasonable opportunity of being heard in the matter. The impugned notice came to be issued in compliance with statutory requirement and therefore the same cannot be said to be without jurisdiction.

The Government has not taken any decision and therefore it is always open to the petitioner to raise all objections before the Government. Indeed as submitted by the learned Assistant Government Pleader, in a subsequent judgment in **State of A.P. v N.Audikesava Reddy**, the Supreme Court overruled the decision of **Atia Mohammadi Begum's case** (supra).

It is now axiomatic that against show cause notice no writ petition would lie even where the question of jurisdiction is raised. In **State of U.P. v Shri Brahma Datta Sarma**, the respondent was charge sheeted and he was dismissed after enquiry. The U.P.Public Service Tribunal affirmed the order of dismissal. The High Court of Allahabad set aside the dismissal order. But, during the pendency of the proceedings before the High Court, as the respondent retired, the High Court declared that he shall be entitled to pensionary benefits, however, giving liberty to the Government to initiate fresh proceedings, if it is permissible. The State Government issued a show-cause notice in accordance with Art.470 (b) of Civil Service Regulations proposing to initiate disciplinary proceedings. The show-cause notice contained allegations of misconduct regarding financial irregularities. The respondent submitted explanation to the show-cause notice. Even before the same could be examined, he approached the High Court and filed a writ petition

questioning the show-cause notice. A learned single judge quashed the impugned show-cause notice on the ground that as the disciplinary proceedings were quashed by the High Court, it was not open to the State Government to issue another show-cause notice under Article 470(b) of the Civil Service Regulations. In the appeal filed by the State Government, the Supreme Court held that the High Court committed error in quashing the show-cause notice and further observed as follows:

The High Court was not justified in quashing the show-cause notice. When a show-cause notice is issued to a Govt.servant under a statutory provision calling upon him to show-cause, ordinarily the Govt.servant must place his case before the authority concerned by showing cause and the Courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show-cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature. The High Court in our opinion ought not to have interfered with the show-cause notice.

In **Special Officer, ULC v. M.Vijayalakshmi**, a Division Bench of this Court was concerned with the validity of a show-cause notice issued by the Government of Andhra Pradesh under Section 34 of the Urban Land (Ceiling and Regulation) Act, 1976. While holding that a writ petition seeking judicial review under Art.226 of the Constitution at the stage of show-cause notice is not maintainable, it was held as follows:

Two principal issues arise for consideration: Firstly, the power of the State Government to review the order in terms of the provisions of Section 24 of the Act and secondly, the jurisdiction of the High Court under Article 226 of the Constitution in the matter of interference at a stage of the proceeding when the governmental authority did deem it fit to exercise its statutory power and has issued a show-cause notice in terms therewith. Turning attention onto the second count first, **it is rather pertinent to note that scope of judicial reviewability in a situation like the present one is extremely limited and the High Court would be rather slow and loath to intervene at this stage of proceedings since the authority ought to be given a free hand and a full play in the matter of enquiring into the circumstances which prompted the authority concerned to issue the show cause notice.** It is in this context, the observations of a learned single Judge of the Calcutta High Court in the case of **I.T.C.Limited vs. Union of India** seem to be rather apposite wherein the learned single Judge observed that ordinarily, **a writ petition is not maintainable against a show-cause notice in as much as, when a show-cause notice is issued, the party gets an opportunity to place his case before the authority concerned and there are elaborate proceedings by way of an appeal and/or revision against such order passed in such proceeding…**

(emphasis mine)

A reference may also be made to a recent judgment of Supreme Court in **Special Director V Mohd.Ghulam Ghouse**. In the said case, the Special Director in Enforcement Directorate, Ministry of Finance, Government of India issued a show cause notice to the respondent alleging violation of provisions of the Foreign Exchange Regulation Act, 1973 and the Foreign Exchange Management Act, 1999.

It was alleged that the respondent committed financial irregularities about Acs.270-00 by forging documents and manipulating accounts. Challenging the same, the respondent approached the Bombay High Court. The High Court issued interim order restraining the Special Director from initiating any proceedings in the show cause notice. The Court observed that whether the show cause notice was founded on any legal premises, is a jurisdictional issue which can be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing legal notice initially, and laid down as under:

This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

In the result, for the above reasons, I do not find any merit in the writ petition. However, it is made clear that the Government shall consider the explanation that may be submitted by the petitioner and all other documents, and afford an opportunity of being heard the petitioner and pass appropriate orders in the matter. The writ petition is accordingly dismissed. There shall be no order as to costs.

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(V.V.S.RAO,J)

12.10.2004.

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To

1. The Principal Secretary, Revenue Department,

Government of Andhra Pradesh, Secretariat buildings,

Hyderabad.

2. The District Collector, Krishna at Machilipatnam.

3. The Special Officer and Competent Authority,

Urban Land Ceiling, Vijayawada-3, Krishna District.

4. Two CCs to the Government Pleader for Assignment,

High Court Buildings, Hyderabad (O.U.T)

5. Two C.D. Copies.